

### **REMARKS**

Claim 1-19 are pending. Applicant respectfully request reconsideration of claims based on this Amendment.

Paragraphs on pages 2 and 4 in the specification have been amended to correct certain errors pointed out by the Examiner. In addition, a typographical error on page 4 ("pluses" rather than the correct "pulses") has been corrected. No new matter has been added.

Claims 4, 12, and 15 have been amended to correct certain errors pointed out by the Examiner. No new matter has been added.

Claims 1 and 11, the only independent claims, have been amended to more clearly define the invention. Support for this amendment can be found on pages 3 (lines 2-6) and 4 (lines 20-23). No new matter has been added.

### **OBJECTIONS TO THE SPECIFICATION**

Applicant thanks the Examiner for pointing out certain errors in the specification (pages 2 and 4). These have been corrected as appropriate. It should be noted, however, that the supposed errors associated with missing letters (i.e., the letter "e" missing in "d tailed d scription" on page 2; "g nerally" on page 5; and "b tween" on page 7) do not appear in Applicant's copy of the specification and, thus, have not been amended. A copy of the specification as filed is supplied for the Examiner's convenience.

Applicant respectfully requests that these objections be withdrawn.

### **OBJECTIONS TO THE CLAIMS**

Claims 4, 12, 13, and 15 were objected to because of certain informalities. Claims 4 and 15 were amended to insert "is" as suggested by the Examiner. Claim 13 was amended to remove the second occurrence of "along" as suggested by the Examiner. As for claim 12, Applicant's copy of does not contain the misprint "lectrostimulation" as suggested by the Examiner; thus claim 12, has not been amended. As noted above, a copy of the specification as filed is supplied for the Examiner's convenience.

Applicant respectfully requests that these objections be withdrawn.

**REJECTION OF CLAIMS 1-6 & 11-17 UNDER 35 U.S.C. §102(b)**

Claims 1-6 and 11-17 have been rejected under 35 U.S.C. §102(b) as being anticipated by Chen et al., U.S. Patent 5,690,691. Applicant respectfully submit that the amended claims are neither anticipated by, nor rendered obvious, by Chen et al. alone or combined with any of the art of record.

Chen et al. provides, as illustrated in Figure 5, phased, multi-point electrical stimulation of organs in the gastro-intestinal tract. Although Chen et al. is mainly directed to electrostimulation of the major gastro-intestinal tract organs (i.e., stomach, small intestines, and colon) at the same time, they do teach electrostimulation of the individual organs.

However, Chen et al. does not teach or suggest that electrostimulation of the small intestines alone (i.e., without concurrent electrostimulation of the stomach) would have any effect, much less the effect required by the amended claims (i.e., "to prevent or slow down stomach emptying, thereby slowing food transit through the patient's digestive system"), on the stomach. Chen et al. effectively teaches that electrostimulation of a given organ only effects that particular organ. For example, Chen et al. specifically teaches that

"in treating obesity, one might apply retrograde, phase pacing of 3.3 to 12 cpm to electrodes positioned in or on the stomach; thereby overriding the natural peristaltic flow through the stomach. Likewise, in treating small bowel syndrome, one might apply retrograde, phase pacing of 9.9 cpm or more to the bowel." Col. 6, line 66, col. 7, line 4.

Based on Chen et al., treatment of obesity by delaying emptying of the stomach would require electrostimulation to the stomach. Electrostimulation of the bowel would only be suitable for a condition associated with the bowel (e.g., small bowel syndrome (col. 7, lines 2-4); constipation (col. 6, lines 57-58; col. 9, lines 48-50); diarrhea (col. 9, line 52); dumping syndrome (col. 9, lines 52-53); irritable bowel syndrome (col. 9, line 53)). Nowhere is it taught or suggested in Chen et al. that electrostimulation of the bowel will have any effect on the stomach. Indeed, Chen et

al. teaches away from such an effect since they effectively teach that electrostimulation of the bowel can only effect or treat conditions associated with the bowel.

As indicated above, independent claims 1 and 11 have been amended to require that "the electrical stimulation to the small intestines alters the patient's natural gastric motility to prevent or slow down stomach emptying, thereby slowing food transit through the patient's digestive system." Nowhere does Chen et al. teach or suggest such an effect. Chen et al. cannot anticipate the present claims.

Claims 1-6 and 11-17 are not anticipated by Chen et al. Applicant respectfully requests that this rejection be withdrawn.

**REJECTION OF CLAIMS 7-10, 18, & 19 UNDER 35 U.S.C. §103(a)**

Claims 1-10, 18, and 19 have been rejected under 35 U.S.C. §103(a) as being obvious over Chen et al., U.S. Patent 5,690,691, in view of Mintchev et al., U.S. Patent 6,449,511. Applicants respectfully submit that the amended claims are not rendered "obvious to one having ordinary skill in the art" in view of Chen et al. alone or combined with Mintchev et al.

As noted above (which comments are included by reference herein), Chen et al. does not teach or suggest that electrostimulation of the small intestines alone (i.e., without concurrent electrostimulation of the stomach) would have any effect, much less the effect required by the amended claims (i.e., "to prevent or slow down stomach emptying, thereby slowing food transit through the patient's digestive system"), on the stomach. Mintchev et al. does not correct this or other deficiencies noted above with regard to Chen et al. More specifically, Mintchev et al. does not teach or suggest that electrostimulation of the small intestines alone (i.e., without concurrent electrostimulation of the stomach) would have any effect, much less the effect required by the amended claims (i.e., "to prevent or slow down stomach emptying, thereby slowing food transit through the patient's digestive system"), on the stomach.

Claims 1-10, 18, and 19 are not rendered obvious over Chen et al. alone or combined with Mintchev et al. Applicant respectfully requests that this rejection be withdrawn

**CONCLUSION**


Applicant respectfully submit that all rejections and objections have been overcome and that all pending claims are in condition for allowance.

If the Examiner believes that a telephonic or personal interview would be helpful to terminate any issues which may remain in the prosecution of the Application, the Examiner is requested to telephone Applicant's attorney at the telephone number set forth herein below.

The Commissioner is hereby authorized to charge any additional fees which may be required in the Application to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

  
\_\_\_\_\_  
Richard A. Kaba  
Reg. No. 30,562

Date: December 14, 2005

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**Inventors:** CHEN Atty Docket.No. 6328/79109  
**Title:** IMPROVED PROCESS FOR ELECTROSTIMULATION TREATMENT  
OF MORBID OBESITY  
**Filed:** Herewith RAK/jp  
**Application No.:** N/A **Date Mailed:** July 25, 2003

**Transmitted herewith:**

1. Utility Patent Application Transmittal (3 pages in triplicate)
2. General Authorization for Petition for Extension of Time (1 page)
3. Executed Declaration (3 pages)
4. Specification, including claims and formal drawings (17 pages)
5. Return Postcard

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03508 U.S. PTO  
10/627908  
07/25/03

**UTILITY PATENT APPLICATION TRANSMITTAL**  
(for Noncontinuing, Nonprovisional Applications  
under 37 C.F.R. §1.53(b))

Attorney Docket No. 79109

Mail Stop PATENT APPLICATION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing under 37 C.F.R.  
§1.53(b) is the nonprovisional, noncontinuing  
patent application for:

Title: IMPROVED PROCESS FOR  
ELECTROSTIMULATION TREATMENT  
OF MORBID OBESITY

First Named Inventor or Application Identifier:  
CHEN

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

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EV 323494112 US

Date of Deposit July 25, 2003

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P.O. Box 1450, Alexandria, VA 22313-1450.

Edward Price

(Typed or printed name of person mailing)

(Signature of person mailing)

- ☒ 15 pages of the specification (including claims) are enclosed.
- ☒ 2 sheet(s) of drawings are enclosed. ☐ Formal ☒ Informal
- ☐ An executed Oath or Declaration and Power of Attorney naming the actual inventors is enclosed.
- ☒ The names of persons believed to be the actual inventors are set forth in the enclosed unexecuted Oath or Declaration and Power of Attorney (§1.41(a) and §1.53(b)).
- ☐ An Assignment of the invention to \_\_\_\_, and cover sheet are enclosed.
- ☐ A check in the amount of \$\_\_\_\_ to cover the fee for recording the assignment is enclosed.
- ☐ The Recordation Form Cover Sheet includes authorization to charge our Deposit Account for recording the assignment.
- ☐ A 37 C.F.R. §3.73(b) statement is enclosed where an assignee seeks to take action.
- ☐ An Information Disclosure Statement is enclosed.
- ☐ A Form PTO/SB/08 is enclosed.
- ☐ \_\_\_\_ References (copies) listed on the Form PTO/SB/08 are enclosed.
- ☒ A Return Receipt Postcard is enclosed (MPEP §503).
- ☐ Priority of application number \_\_\_\_ filed on \_\_\_\_ in \_\_\_\_ is claimed under 35 U.S.C. §119.
- ☐ A certified copy of the priority document is enclosed.

- ☐ A Computer Program Listing Appendix is enclosed.
- ☐ A Transmittal Cover Letter for Computer Program Listing Appendix is enclosed.
- ☐ Two (2) Compact Discs are enclosed.
- ☐ A Nucleotide and/or Amino Acid Sequence Submission is enclosed.
- ☐ A Computer Readable Copy is enclosed.
- ☐ A Paper Copy (Identical to Computer Copy) is enclosed.
- ☐ A Statement Verifying Identity of above Copies is enclosed.
- ☒ The filing fee is calculated below:

Fee Calculation For Claims As Filed

Basic Fee							\$	750.00
Independent Claims	<u>2</u>	-	<u>3</u>	=	<u>0</u>	x	\$ 84.00	= \$ 0.00
Total Claims	<u>19</u>	-	<u>20</u>	=	<u>0</u>	x	\$ 18.00	= \$ 0.00
Fee for Multiply Dependent Claims							\$ 280.00	
							Total Filing Fee	\$ 750.00

- ☐ Applicant(s) assert entitlement to Small Entity Status, reducing the Filing Fee by half to: \$ 0.00
- ☐ A check in the amount of \$\_\_\_\_\_ to cover the filing fee is enclosed.
- ☒ Charge \$ 750.00 to Deposit Account No. 06-1135.
- ☐ The payment of the Filing Fee is to be deferred until the Declaration is filed. Do not charge our Deposit Account.
- ☒ A separate written request under 37 C.F.R. §1.136(a)(3), which is a general authorization to treat any concurrent or future reply requiring a petition for an extension of time under 37 C.F.R. §1.136(a) for its timely submission as incorporating a petition for an extension of time for the appropriate length of time, is enclosed.
- ☒ The Commissioner is hereby authorized to charge any additional fees which may be required in this application under 37 C.F.R. §§1.16-1.17 during its entire pendency, or credit any overpayment, to Deposit Account No. 06-1135. Should no proper payment be enclosed herewith, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1135. This sheet is filed in triplicate.
- ☐ Also enclosed:

☒ Address all future communications to Customer Number 22242.



July 25, 2003

Date

A handwritten signature in black ink, appearing to be 'R. Kaba', written over a horizontal line.

Richard A. Kaba

Registration No. 30,562

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PATENT

Attorney Docket No. 79109

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): CHEN

Appln No.: N/A

Filed: Herewith

For: IMPROVED PROCESS FOR  
ELECTROSTIMULATION  
TREATMENT OF MORBID  
OBESITY

Group Art  
Unit: N/A

Examiner: N/A

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Edward Price

(Typed or printed name of person mailing)

(Signature of person mailing)

**GENERAL AUTHORIZATION FOR PETITION FOR  
EXTENSION OF TIME UNDER 37 C.F.R. §1.136(a)(3)**

**Mail Stop PATENT APPLICATION**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Applicant(s) hereby request under 37 C.F.R. §1.136(a)(3) by this general authorization that any concurrent or future reply submitted by Applicant(s) to the United States Patent and Trademark Office for the above-identified patent application requiring a petition for an extension of time under §1.136(a) for its timely submission be treated as incorporating therein a petition for an extension of time for the appropriate length of time.

If Applicant(s) do not timely pay for any extension fee(s) pursuant to 37 C.F.R. §1.136(a) which may become due for this application under 37 C.F.R. §1.17 by check, the Commissioner is hereby authorized to charge such fee(s), and any additional fees which may be required in this application under 37 C.F.R. §§1.16-1.17 during its entire pendency, or credit any overpayment, to Deposit Account No. 06-1135.

July 25, 2003

Date

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